Schwartz, 47 Pa. 503. But with personalty, the court could not look beyond the will and no examination into the circumstances of the testator's property was permitted. *Nannock* v. *Horton*, 7 Ves. Jr. 391; *Jones* v. *Tucker*, 2 Mer. 533. *Contra*, *White* v. *Hicks*, 33 N. Y. 383. However, the Wills Act and similar legislation in this country reversed the common-law presumption, and today a testamentary gift described generally operates as an exercise of a power unless the contrary intention is shown. 7 WM. IV & 1 VICT., c. 26, § 27; 1 N. Y. REV. STAT. 737, chap. 126, KY. GEN. STAT. 1888, chap. 113, § 22. Some jurisdictions have reached the same result without the aid of a statute. *Amory* v. *Meredith*, 7 Allen (Mass.) 397; *Emery* v. *Haven*, 67 N. H. 503, 35 Atl. 940. Limited powers, however, remain unaffected by the statutes and as to them the common law still applies. *Re Huddleston*, [1894] 3 Ch. 595; *Re Wilkinson*, [1910] 2 Ch. 216; *Re Glassington*, [1906] 2 Ch. 305. The principal case is clearly within the provision of the Wills Act and presents solely the question whether there was a contrary intention expressed in the residuary clause sufficient to rebut the presumption that the bequest of the stock was meant as an execution of the power. The court in deciding the question in the negative seems to have reached the correct result.

PRINCIPAL AND SURETY — JOINT AND SEVERAL CONTINUING GUARANTEE — NOTICE TO CREDITOR OF DEATH OF GUARANTOR — DISCHARGE OF GUARANTOR. — In consideration of C's agreeing or continuing to deal with P, the undersigned, G and five others, jointly and severally guaranteed payment of P's liabilities to C, present and future, and agreed that it should be a continuing guarantee until the undersigned or the executors or administrators of the undersigned should give notice not to make further advances. C was not bound to extend credit. G died and his executor gave notice purporting to terminate the liability of the estate under the guarantee. Subsequent to this further advances were made to P. *Held*, that the estate of G is liable until each and all of them, or their respective executors or administrators should give notice of termination. *Egbert* v. *National Crown Bank*, L. R., [1918] A. C. 903.

A mere guarantee of advances, no present consideration being given, is but an offer for successive unilateral contracts which the death of the offeror *ipso facto* terminates. *Aiken* v. *Lang's Adm'r*, 106 Ky. 652, 51 S. W. 154; *Hyland* v. *Habich*, 150 Mass. 112, 22 N. E. 765. But where a contract has been made, death does not terminate it. *Kernochen* v. *Murray*, 111 N. Y. 306, 18 N. E. 868; *Lloyds* v. *Harper*, L. R. 16 Ch. D. 290. See 13 HARV. L. REV. 216. Losing sight of this fundamental distinction seems to have led to confusion. Thus, mere guarantees have been called contracts terminable upon notice of death either by reading such a limitation into the contract or by holding the consideration divisible. *Dodd* v. *Whalen*, [1897] 1 Ir. 575; *Ascherson* v. *Tredegar Dry Dock and Wharf Co.*, [1909] 2 Ch. 401; *Valentine* v. *Donohoe-Kelly Banking Co.*, 133 Cal. 191, 65 Pac. 381. Where the guarantee is under seal, as an offer is merely intended, the seal, in this country, will not prevent its termination by the death of the guarantor. *Jordon* v. *Dobbins*, 122 Mass. 168. But some courts will require notice to the creditor. *Gay* v. *Ward*, 67 Conn. 147, 34 Atl. 1025; *National Eagle Bank* v. *Hunt*, 16 R. I. 148, 13 Atl. 115. Where, however, there is a binding contract for a definite time the only possible remedy would seem to be on equitable grounds; equity will prevent a forfeiture, unnecessary damages must be avoided. See 30 HARV. L. REV. 494. In the principal case a contract was apparently intended, but the consideration being illusory a mere offer resulted, which was *ipso facto* terminated by the guarantor's death. But assuming a valid contract, the doctrine of *Dodd* v. *Whalen* is inapplicable, as here notice by the guarantors or their executors is provided for. Accord-

ingly, after notice of termination by G's executor, the only relief would be on the above equitable grounds.

PUBLIC SERVICE COMPANIES — SPECIFIC PERFORMANCE — CONDITIONS TO GRANTING RELIEF. — The plaintiff contracted to furnish the defendant city with water and light, together with a certain number of hydrants and arc lamps for the use of which the city was to pay a specified rental. Owing to the direction in which the city had grown, certain of the hydrants and lights were useless, and others were not advantageously located. The city refused to go on with the contract. *Held*, specific performance will be granted subject to the equitable modifications of the contract that certain hydrants and lights be relocated. *La Follette* v. *La Follette Water, Light, & Tel. Co.*, 252 Fed. 762 (C. C. A., 6th Circuit, Tenn.).

If unforeseen contingencies produce hardship in the performance of a contract, specific performance may be granted with such modifications as justice requires. *King* v. *Raab*, 123 Ia. 632, 99 N. W. 306; *Wright* v. *Vocalion Organ Co.*, 148 Fed. 209. But mere hardship resulting from foreseeable circumstances will not prevent complete relief to the plaintiff. *Franklin Tel. Co.* v. *Harrison*, 145 U. S. 459; *Clark* v. *Hutzler*, 96 Va. 73, 30 S. E. 469. On this ground the principal case is wrong. The result, however, is correct on the principle that a public utility must furnish reasonable service. A utility may not contract that it be relieved of its public duty. *Inter-Ocean Pub. Co.* v. *Associated Press*, 184 Ill. 438, 56 N. E. 822; *Smith* v. *Gold & Stock Tel. Co.*, 42 Hun (N. Y.) 454. Then, as in the instant case, if the performance of a contract conflicts with the legal duty of the utility to render reasonable service, the contract is unlawful. See 32 HARV. L. REV. 74, 79. This principle is also illustrated by the regulation of fares according to the necessities of adequate service, despite prior stipulations fixing the rate. *Rogers Park Water Co.* v. *Fergus*, 180 U. S. 624; *Arlington Board of Survey* v. *Bay State St. Ry.*, 224 Mass. 463, 113 N. E. 273. Some courts, however, have put the regulation of rates under the police power. See 32 HARV. L. REV. 74, and cases cited. It would seem to follow that a special contract would have no effect whatever. But it is not futile. The consumer under the contract should be bound to accept the service of the utility, whereas if there were no contract, he could refuse. The only limitation on this service is that it be reasonable at all times.

RES JUDICATA — WHAT JUDGMENTS ARE CONCLUSIVE — AWARD OF JUSTICES OF THE PEACE. — A statute provided that every person who shall carelessly damage any lamp-post belonging to the Electric Light Company shall pay by way of satisfaction to the company an amount not exceeding £5, as any two justices or the sheriff shall think reasonable. The plaintiff, in his suit before the justices, was awarded £5, and now seeks to recover for the additional damage; the extent of the damage being £29. *Held*, that the award by the justices made the matter *res judicata*. *Birmingham Corporation* v. *Samuel Allsopp and Sons, Ltd.*, 145 L. T. 454.

The statute involved in the principal case did not preclude the plaintiff from bringing suit before a tribunal competent to award full compensation. *Crystal Palace Gas Co.* v. *Idris & Co.*, 82 L. T. R. 200. The case then comes within the rule that a judgment by a justice of the peace is a bar to another proceeding on the same cause of action. *Worral* v. *Des Moines Retail Grocers' Ass.*, 157 Iowa, 385, 138 N. W. 481; *Liscum* v. *Henderson Sturgis Piano Co.*, 44 Okla. 549, 145 Pac. 773. See *Brundsen* v. *Humphrey*, 14 Q. B. D. 141, 145. Even if the plaintiff objects that the award is inadequate, the rule is still applicable. *Wright* v. *London General Omnibus Co.*, 2 Q. B. D. 271. *Cf. Bilyeu* v. *Pilcher*, 16 Okla. 228, 83 Pac. 546; *Pilcher* v. *Ligon*, 91